

# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

Douglas W. Domenech,  
Secretary of Natural Resources

BLUE RIDGE REGIONAL OFFICE  
7705 Timberlake Road, Lynchburg, Virginia 24502  
(434) 582-5120 Fax (434) 582-5125  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

**Lynchburg Office**  
7705 Timberlake Road  
Lynchburg, Virginia 24502  
(434) 582-5120  
Fax (434) 582-5125

**Roanoke Office**  
3019 Peters Creek Road  
Roanoke, Virginia 24019  
(540) 562-6700  
Fax (540) 562-6725

### **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ROCK-TENN CONVERTING COMPANY Solid Waste Permit No. 511**

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Rock-Tenn Converting Company regarding the Rock-Tenn Industrial Waste Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.



4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Landfill" means Rock-Tenn Company - Tyreeanna Site, located at 1801 Concord Turnpike in Lynchburg, Virginia, which is owned and operated by the Rock-Tenn Company.
6. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit SWP No. 511, which was issued under the Virginia Waste Management Act and the Regulations to Rock-Tenn Company on March 16, 1989.
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.*
11. "Rock-Tenn" means Rock-Tenn Converting Company a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Rock-Tenn Company is a "person" within the meaning of Va. Code § 10.1-1400.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

#### SECTION C: Findings of Fact and Conclusions of Law

1. On March 16, 1989, Rock-Tenn was granted a permit to operate an Industrial Landfill by the Director of the Department of Waste Management. The Permit allows the disposal of industrial wastes.
2. The Facility was operated as an Industrial Landfill from the time the permit was issued until the Facility was closed and entered post-closure care on December 20, 1996. The Facility is subject to the Virginia Waste Management Act, the Regulations, and the Permit.



3. The Company previously had financial assurance (FA) for the Facility in the form of a financial test, but failed to renew or obtain FA by December 31, 2008, and the company no longer passed the financial test requirements. Rock-Tenn was required to post FA in the amount of \$114,452.00 which includes the post-closure cost estimate adjusted for inflation.
4. A June 5, 2009, DEQ inspection included a violation for failing to have proper FA. The DEQ sent a Warning Letter to Rock-Tenn based on this inspection.
5. On September 1, 2009, DEQ staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations and the Permit. Based on the inspection and follow-up information, DEQ staff made the following observations:

The Company had failed to obtain financial assurance (FA) by the required renewal date (12/31/08) and was operating a landfill without financial responsibility established.

6. 9 VAC 20-70-112(B) requires that owners and operators to provide continuous FA coverage for post-closure care until released by the Director.
7. On September 9, 2009, based on the inspection and follow-up information, the DEQ issued Notice of Violation No. 09-09-BRRO-L-005 to Rock-Tenn for the violations described in paragraph C (5), above.
8. On September 11, 2009, Rock-Tenn responded to the Notice of Violation by immediately beginning the process of obtaining FA.
9. On September 14, 2009, the company Treasurer informed DEQ staff that Rock-Tenn had re-established FA in the amount of \$114,452.00 under the previous FA mechanism and intended to use a self insurance mechanism for FA in the following term.
10. The Board concludes that Rock-Tenn has violated 9 VAC 20-70-112(B), as described in paragraph C (5) above.
11. Rock-Tenn has submitted FA documentation and DEQ Office of Finance staff have verified that the violation described in paragraph C (5), above, has been corrected.

#### SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Rock-Tenn and Rock-Tenn agree to:

1. Pay a civil charge of \$9,450 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.



Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Rock-Tenn shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Rock-Tenn for good cause shown by Rock-Tenn, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Rock-Tenn neither admits nor denies the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Rock-Tenn consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Rock-Tenn declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Rock-Tenn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.



8. Rock-Tenn shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Rock-Tenn shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Rock-Tenn shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Rock-Tenn intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Rock-Tenn.

11. This Order shall continue in effect until:

- a. Rock-Tenn petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Rock-Tenn.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Rock-Tenn from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

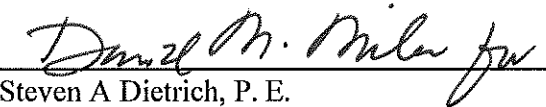
12. Any plans, reports, schedules or specifications attached hereto or submitted by Rock-Tenn and approved by the Department pursuant to this Order are incorporated into this Order.



Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Rock-Tenn certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Rock-Tenn to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Rock-Tenn.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Rock-Tenn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26<sup>th</sup> day of May, 2010

  
Steven A Dietrich, P. E.  
Regional Director  
Department of Environmental Quality



Converting

Rock-Tenn Company voluntarily agrees to the issuance of this Order.

Date: 4/16/10 By: [Signature], Vice President (BATT)  
(Person) (Title)  
Rock-Tenn Converting Company.

State of Georgia  
~~Commonwealth of Virginia~~

City/County of Gwinnett

The foregoing document was signed and acknowledged before me this 16 day of  
April, 2010, by Gregory L. King who is  
Vice President of Rock-Tenn Converting Company on behalf of the  
corporation.

Carol Anne Francis  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

CAROL ANNE FRANCIS NOTARY PUBLIC Barrow County State of Georgia My Comm. Expires May 18, 2012
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Notary seal: